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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
Mar 31, 2015
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Attorneys for Defendants
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., JPMORGAN CHASE BANK,
N.A., and U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE, SUCCESSOR
IN INTEREST TO BANK OF AMERICA,
NATIONAL ASSOCIATION AS SUCCESSOR
BY MERGER TO LASALLE BANK
NATIONAL ASSOCIATION, AS TRUSTEE
FOR CERTIFICATE HOLDERS OF BEAR
STEARNS ASSET BACKED SECURITIES I
LLC, ASSET-BACKED CERTIFICATES,
SERIES 2005-HE8 (incorrectly named as
U.S. BANK, N.A., which is also the successor in
interest to BANK OF AMERICA, N.A.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DEBRA L. MARCH,

Plaintiff,

vs.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
JPMORGAN CHASE BANK, N.A.;
BANK OF AMERICA, N.A.; and U.S.
BANK, N.A.,

Defendants.

CIVIL NO. 12-00306 DKW-BMK

**MAGISTRATE JUDGE'S
FINDINGS OF FACT AND
RECOMMENDATION FOR
DISPOSITION OF DEFENDANT**

[caption continued on next page]

Hearing:

Date: March 9, 2015

Time: 10:00 a.m.

Judge: Mag. Judge Barry M. Kurren

U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE,
SUCCESSOR IN INTEREST TO
BANK OF AMERICA, NATIONAL
ASSOCIATION AS SUCCESSOR BY
MERGER TO LASALLE BANK
NATIONAL ASSOCIATION, AS
TRUSTEE FOR CERTIFICATE-
HOLDERS OF BEAR STEARNS
ASSET BACKED SECURITIES I
LLC, ASSET-BACKED
CERTIFICATES, SERIES 2005-HE8,

Counterclaimant and
Third-Party Plaintiff,

vs.

DEBRA L. MARCH; and DOES 1
through 20, inclusive,

Counterclaim Defendants,

and

UNITED STATES OF AMERICA,
DEPARTMENT OF TREASURY,
INTERNAL REVENUE SERVICE;
STATE OF HAWAII, DEPARTMENT
OF TAXATION; and DOES 1 through
20, inclusive,

Third-Party Defendants.

**U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE,
SUCCESSOR IN INTEREST TO
BANK OF AMERICA, NATIONAL
ASSOCIATION AS SUCCESSOR
BY MERGER TO LASALLE
BANK NATIONAL
ASSOCIATION, AS TRUSTEE
FOR CERTIFICATE HOLDERS
OF BEAR STEARNS ASSET
BACKED SECURITIES I LLC,
ASSET-BACKED
CERTIFICATES, SERIES 2005-
HE8'S MOTION FOR
(1) CONFIRMATION OF SALE
(2) APPROVAL OF
COMMISSIONER'S REPORT,
FILED JANUARY 13, 2015 AND
(3) WRIT OF POSSESSION,
FILED JANUARY 23, 2015;
EXHIBIT "A"**

**MAGISTRATE JUDGE’S FINDINGS OF FACT AND
RECOMMENDATION FOR DISPOSITION OF DEFENDANT U.S. BANK
NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST
TO BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR
BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR CERTIFICATE HOLDERS OF BEAR STEARNS ASSET
BACKED SECURITIES I LLC, ASSET-BACKED CERTIFICATES,
SERIES 2005-HE8’S MOTION FOR (1) CONFIRMATION OF SALE (2)
APPROVAL OF COMMISSIONER’S REPORT, FILED JANUARY 13, 2015
AND (3) WRIT OF POSSESSION, FILED JANUARY 23, 2015**

Defendant U.S. Bank National Association, As Trustee, Successor In Interest To Bank Of America, National Association As Successor By Merger To Lasalle Bank National Association, As Trustee For Certificate Holders Of Bear Stearns Asset Backed Securities I LLC, Asset-Backed Certificates, Series 2005-HE8 (“U.S. Bank”) Motion for (1) Confirmation of Sale (2) Approval of Commissioner’s Report, filed January 13, 2015 and (3) Writ of Possession, filed January 23, 2015 (“the Motion”) [Dkt. No. 133], was duly noticed and served upon all interested parties. Plaintiff Debra March (“March”) failed to file her Response to U.S. Bank’s Motion by the February 13, 2015 deadline. Instead, March filed her Response to U.S. Bank’s Motion for Sale Confirmation and Other Requested Relief on March 3, 2015 (“Response”). [Dkt. No. 134]. In light of March's late filing, U.S. Bank filed its Reply on March 5, 2015 [Dkt. No. 135].

The Motion was heard before this Court on March 9, 2015, at 10:00 a.m. Miriah Holden appeared on behalf of U.S. Bank. Commissioner, Frank D. Rothschild also appeared by telephone. March did not appear at the hearing, nor

did she request to appear by telephone at the hearing. Despite calls to March at the number previously provided to the Court, the Court was unable to reach March for the hearing.

Having reviewed the Motion, the memoranda of law filed in support of, Response and Reply, the declarations and exhibits submitted in support of and in opposition to the Motion, and the arguments of counsel, and after being fully advised, the Court enters the following Findings and Recommendations:

FINDINGS OF FACT

1. On October 15, 2014, this Court entered its Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion for Summary Judgment on All Claims Contained in Plaintiff's First Amended Complaint, filed on December 19, 2012 and Defendant U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association as Successor by Merger to LaSalle Bank National Association, as Trustee for Certificate Holders of Bear Stearns Asset Backed Securities I LLC, Asset-Backed Certificates, Series 2005-HE8's Counterclaim and Third-Party Complaint for Foreclosure Against Plaintiff Debra L. March; and Granting Third Party Defendant Department of Taxation, State of Hawaii's Motion for Summary Judgment Against Plaintiff Debra L. March ("Foreclosure Decree") [Dkt. No. 115] foreclosing the subject mortgage ("Mortgage").

2. The Foreclosure Decree duly appointed Frank D. Rothschild, as Commissioner (“Commissioner”), to sell the real property located at 56581 Kuhio Highway, Hanalei, Hawai`i 96714, and identified by Tax Map Key No. (4)-5-8-006-046 (the “Property”). *See Exhibit "A."*

3. The Commissioner complied with the foreclosure requirements set forth in the Foreclosure Decree and Notices of Foreclosure Sale.

4. On December 17, 2014, after duly publishing at least three separate notices of the public auction, the Commissioner held a public auction and sold the Property to U.S. Bank, the highest bidder, for a credit bid in the amount of \$345,072.20. The credit bid was the highest bid.

5. The Commissioner made the report of the proceedings and the account of expenses incurred in his *Commissioner's Report*, filed January 13, 2015, and *First Supplemental Commissioner Report*, filed March 6, 2015, reporting that the Property was sold by public auction (collectively, “Commissioner’s Report”). [Dkt. Nos. 132 and 137] .

6. The Commissioner believes that U.S. Bank's bid is a “fair and reasonable one and recommends the Court confirm the sale of said property.”

7. At the confirmation hearing, no persons appeared to bid on the Property. U.S. Bank's bid of \$345,072.20 was the highest bid.

8. The required ten percent (10%) down payment of the sale was offset by the amounts due and owing to U.S. Bank.

9. The Court previously determined in the Foreclosure Decree that U.S. Bank's mortgage lien is a first position, priority and superior lien against the Property.

10. Pursuant to the Foreclosure Decree, the amounts due and owing from March to U.S Bank were as follows:

Unpaid Principal:	\$ 447,254.51
Accrued Interest (from 9/1/08 Thru 5/14/2014):	185,250.00
Pre-Acceleration Late Charges	0.00
Other Charges/Fees:	958.00
Escrow Advance:	<u>29,833.39</u>
TOTAL DUE:	<u>\$663,567.21</u>

The aforesaid total sum, together with per diem interest each and every day after May 14, 2014, until paid, accruing late charges, all advances/recoverable balance, expenses, attorneys' fees, costs, and such other and further amounts and charges as may be proper and allowed, until the closing of the sale herein authorized, is a valid first lien on the Property.

11. A fee of \$5,590 is a reasonable fee for the Commissioner for his services as commissioner [Dkt. No. 138].

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Motion be GRANTED

and an Order ENTERED as follows:

1. Ratifying, approving and confirming the Commissioner's Report and any amendment(s) thereto.
2. Ratifying, approving and confirming the sale of the Property to U.S. Bank (or its nominee) made at the auction held on December 17, 2014, at the price of \$345,072.20 with the purchase price being paid by way of offset of the amounts due and owing to U.S. Bank.
3. Ordering and directing the Commissioner to execute and deliver a Commissioner's conveyance of the Property to U.S. Bank (or its nominee) free and clear of all interest and claims of all parties to this proceeding to said Property for total consideration of a credit bid in the amount of \$345,072.20 upon payment of expenses of conveyancing or to the highest bidder at the confirmation hearing. Closing is to be within 35 days from the entry the Order confirming the sale.
4. Allowing the Commissioner \$5,590.00 for his services and expenses as Commissioner.
5. Commissioner shall pay the funds remaining in his possession, if any, including any rental proceeds, to U.S. Bank at closing.
6. After the Commissioner has made the conveyance and the distributions have been made as set forth in this Order, including attorneys' fees

and costs for U.S. Bank and the Commissioner, and the Commissioner has filed his distribution statement and accounts conforming to the Order confirming sale, the Commissioner shall be discharged from further duties and responsibilities as Commissioner.

7. A judgment for possession and a writ of possession in favor of U.S. Bank (or its nominee) shall issue forthwith, commanding the sheriff to remove March and any tenants or occupants and any persons holding by, through or under them from the Property;

8. U.S. Bank be permitted to pursue a deficiency judgment after the closing of the sale of the Property, if applicable; and

9. Forever barring the March and all parties named in this action and all persons claiming by, through or under March and all other parties, upon closing of the aforesaid sale from any and all right, title and interest and claims at law or in equity in and to the Property, and every part thereof.

10. Granting to U.S. Bank or its nominee immediate and exclusive possession of all of the Property upon delivery to U.S. Bank or its nominee of the conveyance of the Property. The Court reserves jurisdiction to enter such orders as may be necessary or appropriate to assist U.S. Bank or its nominee to gain such possession.

11. The order confirming the sale shall be entered as a final

judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure as there is no just reason for delay.

DATED: Honolulu, Hawai'i, March 31, 2015.



/S/ Barry M. Kurren
Barry M. Kurren
United States Magistrate Judge

APPROVED AS TO FORM:

/s/ Frank D. Rothschild
FRANK D. ROTHSCHILD
Court-Appointed Commissioner

Debra L. March v. Mortgage Electronic Registration Systems, Inc., Civil No. 12-00306 DKW-BMK; **MAGISTRATE JUDGE'S PROPOSED FINDINGS OF FACT AND RECOMMENDATION FOR DISPOSITION OF DEFENDANT U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CERTIFICATE HOLDERS OF BEAR STEARNS ASSET BACKED SECURITIES I LLC, ASSET-BACKED CERTIFICATES, SERIES 2005-HE8'S MOTION FOR (1) CONFIRMATION OF SALE (2) APPROVAL OF COMMISSIONER'S REPORT, FILED JANUARY 13, 2015 AND (3) WRIT OF POSSESSION, FILED JANUARY 23, 2015**